

offer as to why the application for exemption or renewal of exemption should have been approved. The Deputy Administrator upon consideration of such appeal will take such action as deemed appropriate with respect to the application for exemption or renewal of exemption.

(e) *Progress report.* Each handler that is granted an exemption must submit to the Board an annual progress report, due May 1 of each crop year. The progress report shall include the results of the exemption activity (comparison of intended activity with actual activity) for the year in its entirety, the volume of exempted fruit, an analysis of the success of the exemption program, and such other information as the Board may request.

(f) *Diversion credit; failure to meet terms and conditions of exemption.* Handler diversion certificates for exempt uses shall be issued to handlers provided that terms and conditions applicable to exempt uses are satisfied. Diversion certificates will not be issued to handlers for any volume of tart cherry products for which such terms and conditions are not satisfied and such cherries would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

(g) *Failure to meet terms and conditions for exemption.* Upon termination of an exemption, any volume of tart cherry products that were granted an exemption but were not utilized for the authorized exempt purpose would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

[63 FR 405, Jan. 6, 1998, as amended at 65 FR 35267, June 2, 2000; 66 FR 39413, July 31, 2001]

§ 930.163 Deferment of restricted obligation.

A handler may obtain a surety bond on restricted percentage cherries to be posted to temporarily defer the date that inventory reserves must be held. The surety bond must be posted at two times the market value of the quantity of cherries for which the holding obligation is being deferred. The Board can temporarily defer the date inventory reserve cherries must be held to any date requested by the handler. How-

ever, this date shall not be later than 60 days prior to the end of the crop year. The deferment shall be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the deferment date requested by the handler the handler will have fully satisfied the restricted percentage obligation. On or prior to the deferment date requested by the handler, the handler will have to fully satisfy the restricted percentage obligation. In the event, a handler has posted the surety bond, reached the deferment date deadline and does not have cherries in the inventory reserve to cover his/her inventory reserve obligation, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill that handler's obligation.

[66 FR 35891, July 10, 2001]

Subpart—Assessment Rates

§ 930.200 Handler assessment rates.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be \$0.00175 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be \$0.000875 per pound.

[67 FR 20616, Apr. 26, 2002]

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

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931.231 Assessment rate.

AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 30 FR 12285, Sept. 25, 1965, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 931.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 931.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933) as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 931.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 931.4 Production area.

Production area means and includes the States of Oregon and Washington.

§ 931.5 Pears.

Pears means all pears grown in the production area classified botanically as belonging to the Bartlett cultivar of *Pyrus Communis*.

§ 931.6 Variety.

Variety means any type or strain of pears which has distinctive attributes and is designated by a common name, such as Red Bartlett.

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§ 931.7 Fiscal period.

Fiscal period means the period beginning July 1 of any year and ending June 30 of the following year or such other period as the committee, with the approval of the Secretary, may establish.

§ 931.8 Committee.

Committee means the Northwest Fresh Bartlett Pear Marketing Committee established pursuant to § 931.20.

§ 931.9 Grade.

Grade means any one of the officially established grades of pears as defined and set forth in:

(a) United States Standards for Summer and Fall Pears (7 CFR 51.1260 *et seq.*) or amendments thereto, or modifications thereof, or variations based thereon; or

(b) Standards for pears issued by the State of Oregon or the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 931.10 Size.

Size means the number of pears which can be packed in a standard western pear box 18 inches long, 11½ inches wide, and 8½ inches deep (inside measurements) when packed in accordance with the packing requirements of the U.S. Standards for Summer and Fall Pears (effective August 20, 1955), or as such standards thereafter may be modified, or *Size* means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications as may be established by the committee, with the approval of the Secretary.

§ 931.11 Grower.

Grower is synonymous with *producer* and means any person who produces pears for fresh market and who has a proprietary interest therein.

§ 931.12 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier transporting pears owned by another person) who handles pears.

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§ 931.13 Handle.

Handle or *ship* means to sell, deliver, consign, or transport pears within the production area or between the production area and any point outside thereof: *Provided*, That the term *handle* shall not include the transportation within the production area from the orchard where grown to a packing facility located within such area for preparation for market.

§ 931.14 District.

District means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 931.31(m):

(a) *Wenatchee District* shall include the counties of King, Chelan, Douglas, Grant, Lincoln, Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(b) *Yakima District* shall include all of the State of Washington not included in the Wenatchee District or in the Hood River-White Salmon District.

(c) *Mid-Columbia District or the Hood River-White Salmon District* shall include those counties in the State of Oregon not included in the Medford District and the counties of Skamania and Klickitat in the State of Washington.

(d) *Medford District* shall include the Counties of Jackson, Josephine, Curry, Coos, Douglas, Lane, and Klamath in the State of Oregon.

§ 931.15 Export.

Export means to ship pears to any destination which is not within the 48 contiguous States, or the District of Columbia of the United States.

§ 931.16 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of pears in a particular type and size of container, or any combination thereof.

§ 931.17 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of pears.

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ADMINISTRATIVE BODY

§ 931.20 Establishment and membership.

There is hereby established a Northwest Fresh Bartlett Pear Marketing Committee consisting of fourteen (14) members, each of whom shall have an alternate who shall have the same qualifications as the member for whom his is an alternate. Eight (8) of the members and their respective alternates shall be growers or officers or employees of growers. Six (6) of the members and their respective alternates shall be handlers or officers or employees of handlers. Each district shall be represented on the committee by two (2) grower members and their respective alternates who are producers of pears in such districts. The Yakima and Medford Districts shall each be represented on the committee by two (2) handler members and the Wenatchee and Mid-Columbia Districts each by one (1) handler member who are handlers of pears in the respective district.

§ 931.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending June 30: *Provided*, That the term of office of one-half of the initial grower members and alternates and one-half of the initial handler members and alternates from the Yakima and Medford Districts and the handler member and alternate from the Wenatchee District shall end June 30, 1966. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 931.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of separate group meetings of the growers and handlers concerned in each district, which shall be publicized

and open to all growers and handlers. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 931.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than June 1 of each year, separate meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. At each such meeting, a chairman and a secretary shall be designated by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the results of nominations for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces pears. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of pears, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he

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handles pears. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of pears, such person may vote either as a grower or as a handler but not as both.

§ 931.23 Selection.

From the nominations made pursuant to § 931.22 or from other qualified persons, the Secretary shall select the eight grower members of the committee, the six handler members of the committee, and an alternate for each such member.

§ 931.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 931.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 931.20.

§ 931.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 931.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 931.22 and 931.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 931.20.

§ 931.27 Alternate members.

An alternate member of the committee, during the absence or at the re-

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quest of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 931.30 Powers.

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ 931.31 Duties.

The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;
- (b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;
- (c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;
- (d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;
- (e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and

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handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to pears;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part; and

(m) With the approval of the Secretary to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in pear production within the districts and the production area.

§ 931.32 Procedure.

(a) Twelve members of the committee, including alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of all except two of the members present.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast

shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 931.33 Expenses.

The members of the committee and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided*, That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses as aforesaid.

§ 931.34 Annual report.

The committee shall, as soon as is practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) a review of the effect of such regulatory operations upon the pear industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 931.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 931.41.

§ 931.41 Assessments.

(a) Each person who first handles pears shall, with respect to the pears so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period.

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Each such person's share of such expenses shall be equal to the ratio between the total quantity of pears handled by him as the first handler thereof during the applicable fiscal period and the total quantity of pears so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all pears handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 931.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a) (2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operating monetary reserve in an amount not to exceed approxi-

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mately one fiscal year's operational expenses. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 931.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds and claims vested in such member pursuant to this part.

RESEARCH

§ 931.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. The expense of such projects shall be paid from funds collected pursuant to § 931.41.

REGULATIONS

§ 931.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 931.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season.

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Such marketing policy report shall contain information relative to:

- (1) The estimated total production of pears within the production area;
 - (2) The expected general quality and size of pears in the production area and in other areas;
 - (3) The expected demand conditions for pears in different market outlets;
 - (4) The expected shipments of pears produced in the production area and in areas outside the production area;
 - (5) Supplies of competing commodities;
 - (6) Trend and level of consumer income;
 - (7) Other factors having a bearing on the marketing of pears; and
 - (8) The type of regulations expected to be recommended during the season.
- (b) In the event it becomes advisable, because of changes in the supply and demand situation for pears, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall maintain in its office a copy of each marketing policy report, including each revised marketing policy reports, where they may be available to growers and handlers, and may also by means of a press release or other means announce the substance thereof.

§ 931.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of pears in the manner provided in § 931.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for pears during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 931.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of pears whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, or pack, or any combination thereof, of any variety or varieties of pears grown in any district or districts of the production area;

(2) Limit the shipment of pears by establishing, in terms of grades, sizes, or both, minimum standards of quality during any period when the season average price is expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in packaging or handling of pears: *Provided*, That no regulations shall prohibit the use of the 14-pound box or the standard western pear box; and

(4) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of pears which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 931.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 931.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pears in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same

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basis and in like manner, the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 931.54 Special purpose and minimum quantity shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 931.41, 931.52, 931.53 and 931.55, and the regulations issued thereunder, handle pears (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the Committee, or from other available information, the Secretary may relieve from any or all requirements under or established pursuant to § 931.41, § 931.52, § 931.53, or § 931.55, the handling of pears in such minimum quantities, in such types of shipments, including gift fruit shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 931.45) as the committee, with the approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary prescribe such rules, regulations, and safeguards as it may deem necessary to assure compliance with this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle pears pursuant to this section. It may be required that such applications be accompanied by a certification by the intended purchaser or receiver that the pears will not be used for any purpose not authorized by this section.

§ 931.55 Inspection and certification.

Whenever the handling of any variety of pears is regulated pursuant to § 931.52 or § 931.53, each handler who handles pears shall, prior thereto,

cause such pears to be inspected by the Federal or Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for pears which previously have been so inspected and certified only if such pears have been regarded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit or cause to be submitted to the committee a copy of the certificate of inspection issued with respect to such pears. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided*, That all such shipments shall comply with all regulations in effect.

§ 931.56 Exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee:

(a) That by reason of a regulation he will be prevented from handling or having handled as large a proportion of his production as the average proportion of production handled by or for all producers in said applicant's production district; and

(b) That the grade, size, or quality of the applicant's pears have been adversely affected by acts beyond the applicant's reasonable expectation or control. Each certificate shall permit the producer to handle or to have handled the amount of pears specified thereon. Such certificates shall be transferred with such pears at time of shipment. The committee shall be permitted at any time to make a thorough investigation of any producer's claim for exemptions and shall determine what conditions constitute acts beyond the grower's reasonable expectation or control.

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REPORTS

§ 931.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, reports of pears received and disposed of and such other information as may be necessary for the committee to perform its duties under this part.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 931.61 Compliance.

Except as provided in this part, no person shall handle pears the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle pears except in conformity with the provisions and the regulations issued under this part.

§ 931.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in ac-

cordance therewith prior to such disapproval by the Secretary.

§ 931.63 Effective time.

The provisions of this part and of any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminated in one of the ways specified in § 931.64.

§ 931.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of pears for market in fresh form: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of pears produced for fresh market in the production area; but such termination shall be effective only if announced on or before June 30 of the then current fiscal period: *Provided further*, That the Secretary shall conduct such a referendum not later than 5 years from the effective date of this part.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 931.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property

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then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 931.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 931.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 931.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any

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agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 931.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 931.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 931.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart—Rules and Regulations

SOURCE: 56 FR 65800, Dec. 19, 1991, unless otherwise noted.

Agricultural Marketing Service, USDA

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DEFINITIONS

§ 931.100 Terms.

Each term used in this subpart, unless otherwise defined, shall have the same meaning as when used in the marketing agreement and order.

§ 931.101 Marketing agreement.

Marketing agreement means Marketing Agreement No. 147, as amended, regulating the handling of Bartlett pears grown in Oregon and Washington.

§ 931.102 Order.

Order means Order No. 931, as amended (§§ 931.1 to 931.71), regulating the handling of Bartlett pears grown in Oregon and Washington.

COMMUNICATIONS

§ 931.110 Communications.

Unless otherwise specifically prescribed in this subpart, or in the marketing agreement and order, or unless otherwise required by the Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement or order shall be forwarded to: Northwest Fresh Bartlett Pear Marketing Committee 4382 SE International Way, Suite A, Milwaukie, OR 97222-4635.

[65 FR 65255, Nov. 1, 2000]

REPORTS

§ 931.120 Reports.

(a) Each handler shall transmit to the Committee on the first and the fifteenth day of each calendar month during the shipping season the "Semi-Monthly Report on Destination of Shipments and Assessment Payments" containing the following information:

- (1) The quantity of each variety of pears shipped by that handler during the preceding half month;
- (2) The date of each shipment;
- (3) The ultimate destination, by city and state, or city and country;
- (4) The assessment payment due; and
- (5) The name and address of such handler.

(b) Each handler shall transmit to the Committee each Friday during the shipping season the "Weekly North-

west Bartlett Packout Report" containing the following information for each variety:

- (1) The projected total packout;
- (2) The packout to date;
- (3) The volume sold export (shipped/not shipped), sold domestic (shipped/not shipped) and shipped auction;
- (4) The packout to date in controlled atmosphere (C.A.) storage and the volume in C.A. storage which is sold; and
- (5) The name and address of such handler.

(c) Each handler shall furnish to the Committee, upon request, the "Pear Size and Grade Storage Report" containing the quantity of specific grades and sizes of pears in regular and C.A. storage by variety.

ASSESSMENT RATE

§ 931.231 Assessment rate.

On and after July 1, 2001, an assessment rate of \$0.025 per western standard pear box is established for the Northwest Fresh Bartlett Pear Marketing Committee.

[66 FR 59679, Nov. 30, 2001]

PART 932—OLIVES GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

DEFINITIONS

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- | | |
|---------|---|
| 932.1 | Secretary. |
| 932.2 | Act. |
| 932.3 | Person. |
| 932.4 | Area. |
| 932.5 | Olives. |
| 932.6 | Variety group 1. |
| 932.7 | Variety group 2. |
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| 932.9 | Packaged olives. |
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| 932.11 | Grade. |
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| 932.19 | Crop year and fiscal year. |
| 932.20 | Part and subpart. |
| 932.21 | District. |
| 932.22 | Sublot. |
| 932.23 | Undersize olives and limited use size olives. |
| 932.23a | Limited use. |